as there was no evidence introduced tending to show that the defendant had full knowledge of the facts. *Owings* v. *Hull*, 9 Pet. 607; *Lewis* v. *Read*, 13 Mee. & W. 834; *Bennecke* v. *Ins. Co.*, 105 U. S. 355; *Seymour* v. *Wyckoff*, 10 N. Y. 213. It is generally understood that to constitute an estoppel there must be, along with the other elements, some act on the part of the party estopped amounting to a misrepresentation which has been acted upon by the other to his damage. *Pickard* v. *Sears*, 6 Ad. & El. 469; *Andrews* v. *Aetna L. Ins. Co.*, 85 N. Y. 334; 2 POMEROY EQ. JUR. Ed. 3, § 804. In this case the only thing that in any manner approximates an act amounting to a misrepresentation was the enjoyment of the benefits, and even this was not proved. But even if this were an act amounting to a misrepresentation, it occurred *after* the loan by the plaintiff, and hence there could be no estoppel, as there was no reliance on the acts of the party to be estopped. It would seem therefore that if a recovery is to be allowed at all, it should be on the quasi contract and not on the ground of estoppel or ratification.

PRINCIPAL AND AGENT—FRAUD BY AGENT IN PURCHASING FOR PRINCIPAL.—Plaintiff employed defendant as his agent to purchase certain personal property. The agent had previously obtained a personal option to buy the property for $825, which he exercised and then delivered the property to his principal, receiving therefor $2750, which he stated to his principal was the price paid by him for the property. *Held*, that the principal could retain the property, and recover the difference between what the agent charged him and what the agent paid for the property under the option. *Watson* v. *Bayliss* (1911), — Wash. —, 113 Pac. 770.

It is fundamental that a purchasing agent must not purchase from himself. *Bischoffsheim* v. *Baltzer*, 20 Fed. 890; *Maryel* v. *Strouse*, 5 Fed. 483. And there is no question that one holding an option is such an owner as to come within the rule. *Montgomery* v. *Hundley*, 205 Mo. 138. But admitting that the agent is guilty of a breach of duty, the question of the principal's remedy is difficult of solution. There is no doubt that he may return the property and recover the amount paid. *Gillett* v. *Peppercorne*, 3 Beav. 78; *Conkey* v. *Bond*, 36 N. Y. 427; *Disbrow* v. *Secor*, 58 Conn. 35. But if the principal chooses to keep the property, what are his rights? Where the agent owns the property absolutely, it has been decided that the principal can recover only the excess over the *actual value* of the property. *Kevane* v. *Miller*, 4 Cal. App. 598; *Oliver* v. *Lansing*, 48 Neb. 338; *Massey* v. *Davies*, 2 Ves. Jr. 317. And if, where the agent owns the fee the principal, retaining the property, must pay a fair price for it, regardless of what the agent paid, the same result should be reached, on principle, in cases where the agent has a previously acquired option, for an option is as much property, as far as it goes, as is the fee, and the agent should not be deprived of his property without compensation. There are several cases, which contrary to the principal one, deny that the principal, retaining the property, can compel the agent to account for the amount in excess of what he paid under his previously acquired option. *Whitehead* v. *Lynn*, 20 Colo. App. 51; *Sunderland* v. *Kilbourn*, 3 Mackey, 506, Affd. 130 U. S. 505; *Ely* v. *Hanford* 65 Ill. 267. See

Willink v. *Vanderveer,* 1 Barb. 599, contra. Of course if the option is acquired for the express purpose of making a sale to the principal the result is different. *Hindle* v. *Holcomb,* 34 Wash. 336. Possibly those cases which deny a recovery by the principal, and thus practically force him to return the property, go too far. But it would seem, on principle, that cases like the principal one, which compel the principal to pay only the amount paid by the agent, are not sound, in that they overlook the fact that the agent may have made a good bargain. He should not be deprived of his property at less than its value simply because it is an option rather than the fee. In short, if a recovery is to be allowed at all, which seems doubtful on authority, it should be the difference between the amount charged the principal and the actual value, and not the difference between the amount charged and the amount paid under the option.

QUIETING TITLE—RESTRICTIVE COVENANTS—CLOUD ON TITLE.—Pending a sale of a parcel of land from one church to another, a third party took title to the premises in his own name, until consent of diocesan authorities should be obtained. Plaintiff church had possession of the property, and had the right to purchase from the third party. The deed from defendant church to the third party contained a covenant that the premises should never be occupied for any other than church purposes. It was expressly stated that the covenant should attach to and run with the land. The deed from the third party to plaintiff church contained a similar restriction, and deed was accepted by plaintiff. Plaintiff desired to borrow money upon the land in question; but because of the above covenant standing as an apparent burden on the title, destroying its market value because of the restricted use, the loan could not be negotiated. Plaintiff sought to be relieved from the obligation of the covenant on the ground that it is a cloud upon the title. *Held,* the restrictive covenant in the deed casts a cloud upon the plaintiff's title, and plaintiff is entitled to judgment removing the cloud. *Rector, etc., of St. Stephen's Protestant Episcopal Church* v. *Rector, etc., of Church of the Transfiguration* (1911), — N. Y. —, 94 N. E. 191.

The decision was rendered by a divided court, four to three, and CULLEN, C. J., the fourth of the majority, concurred in the result only. GRAY, J., rendered a vigorous dissenting opinion, concurred in by HISCOCK and COLLIN, JJ., in which he denies that plaintiff is entitled to equitable relief. The term "cloud" is not clearly defined in meaning. *Ward* v. *Dewey,* 16 N. Y. 519; *Apperson* v. *Ford, 23* Ark. 746. In general, a cloud on one's title is something which constitutes an apparent encumbrance upon it, or an apparent defect in it. In *Waterbury Savings Bank* v. *Lawler,* 46 Conn. 243, the court says, "A cloud upon one's title is something which shows prima facia some right of a third person to it." A cloud is a semblance of a title, either legal or equitable, or a claim of an interest in lands appearing in some legal form. *Rigdon* v. *Shirk,* 127 Ill. 411, 19 N. E. 698; *Shults* v. *Shults,* 159 Ill. 654, 43 N. E. 800, 50 Am. St. Rep. 188. Justice GRAY, in his dissenting opinion in the principal case, maintains that a covenant in plaintiff's deed is not a cloud on the title. In the light of the authorities above cited, the position of Justice GRAY ap-